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22 United States of America

23 UNITED STATES DISTRICT COURT
24
25 FOR THE DISTRICT OF ALASKA

26 UNITED STATES OF AMERICA,) Case No.:
27)
28 Plaintiff,) IN ADMIRALTY
29)
30 vs.)
31)
32 KLAWOCK OCEANSIDE, INC.,) VERIFIED COMPLAINT
33 LAURANCE E. LANG, an individual, and)
34 SAFE HARBOR POLLUTION INSURANCE)
35 GROUP, *in personam*,)
36)
37 Defendants.)

1 Plaintiff, the United States of America, alleges upon information and belief as follows:

2 **GENERAL ALLEGATIONS**

3
4 1. This is a case of admiralty and maritime jurisdiction against Defendants
5 KLAWOCK OCEANSIDE, INC., LAURANCE E. LANG, an individual, and SAFE HARBOR
6 POLLUTION INSURANCE GROUP, *in personam*, as hereinafter more fully appears, and within
7 Rule 9(h) of the Federal Rules of Civil Procedure.

8
9 2. The United States is authorized to bring this suit pursuant to 28 U.S.C. § 1345,
10 33 U.S.C. §§ 1321 and 2717.

11
12 3. Venue is properly in this Court pursuant to 28 U.S.C. §§ 1391 and
13 33 U.S.C. § 2717.

14
15 4. The United States also brings this action on behalf of the Oil Spill Liability Trust
16 Fund (“Fund”), pursuant to the Oil Pollution Act of 1990, 33 U.S.C. § 2701 *et seq.*, to recover any
17 and all removal costs and damages incurred directly by the Fund, any removal costs and damages
18 incurred by the Fund through compensation paid to any claimant, and all costs incurred by the
19 Fund by reason of any such claims, including interest, prejudgment interest, adjudicative costs,
20 and attorney's fees. Pursuant to the Oil Pollution Act of 1990, 33 U.S.C. § 2712(f), the United
21 States has acquired by subrogation, or may in the future acquire by subrogation, the rights of any
22 claimant or State paid compensation from the Fund, and the United States specifically reserves the
23 right to amend this Verified Complaint to assert any or all such subrogated rights and claims.

24
25 5. At all times material herein, the M/V AKUTAN was a vessel, *inter alia*, owned and
26 operated in the United States and at all times material herein was within the jurisdiction of this
27 Court.
28

1 6. Defendant KLAWOCK OCEANSIDE, INC. ("KLAWOCK"), pursuant to information
2 or belief, is an Alaskan company incorporated under the laws of the State of Alaska. At all material
3 times KLAWOCK had a place of business within this district and within the jurisdiction of this
4 Court, including, but not limited to, through ownership and operation of the M/V AKUTAN at the
5 time of, and with respect to, the matters sued upon herein.
6

7 7. At all times material herein, defendant KLAWOCK owned the M/V AKUTAN.
8

9 8. At all times material herein, defendant KLAWOCK operated the M/V AKUTAN.
10

11 9. At all times material herein, defendant KLAWOCK managed the M/V AKUTAN.
12

13 10. At all times material herein, defendant KLAWOCK demise chartered the M/V
14 AKUTAN.
15

16 11. At all times material herein, defendant KLAWOCK controlled the M/V AKUTAN.
17

18 12. At all times material herein, and by reason of the matters alleged in this Complaint,
19 defendant KLAWOCK is a "responsible party" within the meaning of the Oil Pollution Act of
20 1990, 33 U.S.C. § 2701, *et seq.*
21

22 13. At all times material herein, defendant LAURANCE E. LANG ("LANG") owned
23 the M/V AKUTAN.
24

25 14. At all times material herein, defendant LANG operated the M/V AKUTAN.
26

27 15. At all times material herein, defendant LANG managed the M/V AKUTAN.
28

 16. At all times material herein, defendant LANG demise chartered the M/V
AKUTAN.

 17. At all times material herein, defendant LANG controlled the M/V AKUTAN.

 18. At all times material herein, and by reason of the matters alleged in this Complaint,

1 defendant LANG is a "responsible party" within the meaning of the Oil Pollution Act of 1990, 33
2 U.S.C. § 2701, *et seq.*

3
4 19. At all material times the M/V AKUTAN was a vessel within the meaning of, *inter*
5 *alia*, OPA, 33 U.S.C. § 2701(37).

6 20. At all times material herein, Defendant SAFE HARBOR POLLUTION
7 INSURANCE ("SAFE HARBOR") was and is part of the Falvey Insurance Group, which is
8 headquartered in North Kingstown, Rhode Island, and did, and continues to do, business in the
9 State of Alaska and within this district and within the jurisdiction of this Court, including, but not
10 limited to, by insuring and/or providing evidence of financial responsibility and certain guarantees
11 pertaining to marine oil pollution liabilities incurred by or through the AKUTAN.
12

13 21. SAFE HARBOR provided evidence of financial responsibility and certain guarantees
14 pertaining to the AKUTAN pursuant to statute and regulations; accordingly, pursuant to those
15 statutes and regulations, and up to the monetary limits of its statutory and regulatory liability, the
16 United States of America is entitled to bring its claims directly against said guarantor.
17

18 22. At all times material herein, defendants KLAWOCK and LANG, in addition to
19 defendant SAFE HARBOR, the latter up to the monetary limits of its statutory and regulatory
20 liability, were agents of each other and are therefore responsible and liable, jointly and severally,
21 for all of each of the others' obligations, acts, omissions, and strict liability with respect to the
22 matters alleged in this Complaint and action.
23
24

25 **VESSEL HISTORY AND OPERATION**

26 23. The AKUTAN was a steel-hulled, twin diesel powered fish-freezer processor built
27 in 1944. The vessel was 166.5 feet long and weighed 746 gross tons. Defendant LANG purchased
28 the vessel on March 27, 2012. Thereafter, Mr. Lang sold the vessel to defendant KLAWOCK.

1 24. Defendant LANG was and remains *inter alia*, an owner of defendant KLAWOCK,
2 and was and remains a director, president and shareholder of defendant KLAWOCK.

3
4 25. Over the course of its operation the vessel was in the business of commercial fishing
5 and fish/freezer processing. The vessel's main deck was used for fish processing, and below deck
6 was a freezer hold cargo storage. For the 2017 fishing season the AKUTAN was hired by a fleet
7 of fishing vessels operated by Bristol Bay Seafoods, LLC to process 100,000 pounds of fish per
8 day.
9

10 26. Defendant SAFE HARBOR served as the vessel's guarantor under the
11 requirements of the Oil Pollution Act of 1990, and issued a written guaranty to the United States
12 Coast Guard, National Pollution Funds Center with an effective date of April 1, 2017.
13

14 **INCIDENT AND REMOVAL ACTION**

15 27. On or about August 5, 2017, the AKUTAN departed Dillingham, Alaska, carrying
16 approximately 130,000 pounds of processed fish in its freezer hold, en route Seattle, Washington,
17 with a crew of seven.
18

19 28. At some point during the voyage the vessel began to experience mechanical
20 problems with her portside engine, forcing her to reroute to Dutch Harbor for repairs. Prior to
21 entering Captain's Bay the crew of the Coast Guard Cutter MIDGETT conducted a boarding and
22 safely inspection of the vessel.
23

24 29. Upon boarding the vessel the Coast Guard inspectors observed numerous problems,
25 including a sheared off engine crank shaft on the portside engine and ammonia leaks in the vessel.
26 Given the ongoing safety concerns and the vessel's captain's request, the MIDGETT escorted the
27 vessel into Dutch Harbor, Alaska.
28

1 30. On August 9, 2017, a marine surveyor was retained by the vessel interests to
2 conduct an assessment of the vessel to determine whether she could be towed to Seattle in order
3 that the crew could sell her cargo of fish at a higher price. The survey revealed several problems
4 with the vessel's integrity that would prevent her from making the lengthy tow to Seattle. In
5 addition to the sheared off crank shaft identified by the Coast Guard inspectors, the surveyor found
6 that only one of the vessel's generators was operable. Moreover, ammonia continued to leak from
7 the vessel's compressor and freezer systems. Most significantly of all was the surveyor's concern
8 regarding the watertight integrity of the starboard engine's sea chest, which showed signs of
9 material degradation to pipes and valves and a patchwork of temporary repairs.

12 31. Based on the problems noted by the crew of the MIDGITT during their safety
13 inspection of the vessel, and the marine survey report, the Coast Guard Federal on Scene
14 Coordinator's ("FOSC") Representative determined that the vessel posed a substantial threat of
15 discharges of oil into the navigable waters of the United States in and around Captain's Bay,
16 Unalaska, Alaska.

18 32. Thereafter, the FOSC's Representative established a Unified Command comprised
19 of both federal, State, and local stakeholders and opened a federal project so that funds to remediate
20 the substantial threat of discharge could be obtained from the Fund should the need arise.

22 33. On August 13, 2017, personnel from the Coast Guard, the Alaska Department of
23 Environmental Conservation, Resolve Salvage and Towing, and a marine chemist boarded the
24 vessel to evaluate the situation. Their investigation confirmed that the vessel posed a substantial
25 threat of oil pollution discharge into the waters of Captain's Bay, and that the vessel was in danger
26 of sinking.

1 34. The investigators determined, based upon an estimate of remaining fuel that the
2 single operating generator that powered the bilge pumps that kept the vessel afloat, would run out
3 of fuel within three days.
4

5 35. The vessel was carrying approximately 40,000 gallons of fuel and oily waste water,
6 much of it filling the bilges and slop tanks, which severely hampered the vessel's ability to pump
7 water and maintain stability. Of more concern was the fact that the vessel was taking on significant
8 amounts of water through a cracked propeller shaft, thereby threatening to overwhelm the already
9 overworked bilge pumps.
10

11 36. The FOSC's Representative hired Resolve Marine to remove the fuel and oily waste
12 water from the vessel's overflow tanks. Beginning on August 18, and continuing through the
13 22nd, Resolve removed approximately 15,800 gallons of fuel and oily waste water from the
14 vessel's bilges and slop tanks, leaving an estimated 23,340 gallons onboard. At the same time, the
15 Alaska Department of Labor prohibited the off-loading of the vessel's cargo of fish, and ordered
16 that the vessel remain anchored within Captain's Bay due to the crew's claims for wages owed.
17

18 37. During the response efforts, defendant SAFE HARBOR made several overtures to
19 the FOSC's Representative suggesting that it would take over the response efforts from the Unified
20 Command as it had a financial interest in the vessel and that it preferred to handle the response
21 directly. However, SAFE HARBOR did not follow through on its offer to take over the response,
22 and as a result, the FOSC's Representative continued to supervise the federal response.
23

24 38. During this time, the various vessel interests represented to the FOSC's
25 Representative that they were actively undertaking efforts to remove the vessel from the waters of
26 Alaska by finding buyers for the vessel. They represented to the FOSC's Representative that
27 finding a buyer for the vessel would not be a problem.
28

1 39. Because the captain and crew remained aboard the vessel during and after the
2 foregoing events, and relying on the representations of the vessel's interests that efforts were being
3 made to pay the crew and find a buyer that would remove the vessel from the waters of Alaska, as
4 well as the fact that the efforts to stem the intake of water through the vessel's cracked propeller
5 shaft were successful, the FOSC's Representative agreed to leave the remaining fuel aboard the
6 vessel, approximately 23,340 gallons, so that the vessel's refrigeration system and critical power
7 systems, most notably the vessel's bilge pumps, would remain operable.
8

9
10 40. Despite the foregoing representations of the vessel interests, problems with the
11 vessel continued. On September 1, 2017, the vessel's 130,000 pounds of fish cargo was offloaded
12 and found to be contaminated. At this point the vessel interests abandoned the vessel, apparently
13 because the vessel was no longer of value to them without a merchantable cargo.
14

15 41. During the night of October 4, 2017, and early hours of October 5th, Captain's Bay
16 experienced high winds. Although such windy conditions are not unusual for Captain's Bay, the
17 wind caused the vessel to drag anchor a half mile, coming to rest 200 feet from shore. On October
18 5th the FOSC's Representative determined that the abandoned vessel posed a substantial threat of
19 discharge of oil into the waters in and around Captain's Bay. The FOSC Representative retained
20 the services of Resolve Marine to deploy booms around the vessel to contain any potential
21 discharge of pollutants, and formulate a plan to remove the remaining fuel and oily water.
22

23 42. On August 10, 2017, the FOSC's Representative issued a Notice of Federal Interest
24 ("NOFI") to defendant LANG, identifying the vessel as a substantial threat of oil pollution
25 discharge. Defendant LANG did not respond. Thereafter, having received no response from
26 defendant LANG to the NOFI, the FOSC's Representative issued a Notice of Federal Assumption
27 and an Administrative Order requiring that defendant LANG submit a plan of action to remediate
28

1 the substantial threat of discharge from the AKUTAN. Defendant LANG did not respond to the
2 FOSC's Representative's Order.

3
4 43. Having received no response from defendant LANG to the FOSC's
5 Representative's NOFI, as well as the Notice of Federal Assumption and Administrative Order,
6 the NPFC issued defendant LANG a Notice of Potential Responsibility.

7
8 44. Because defendants herein failed to take action to respond to the potential threat of
9 discharge the vessel presented as ordered by the FOSC's Representative, the United States Coast
10 Guard took action to remediate the situation. The measures taken by the Coast Guard included the
11 offloading of all remaining fuel and oily water from the vessel, and ultimately towing the vessel
12 out to sea and sinking her.

13
14 45. To date, the costs incurred by the Coast Guard to alleviate the substantial threat of
15 discharge of fuel and oily water from the vessel into the waters of Captain's Bay is no less than
16 \$1,463,392, paid to outside contractors. This figure does not include the costs related to the
17 response costs incurred by the Coast Guard, such as the use of Coast Guard personnel and
18 equipment. These costs will increase the total costs incurred by the United States in responding to
19 the substantial threat of discharge of fuel and oily water from the vessel. All such costs shall be
20 established according to proof at trial.

21
22 46. The United States reserves the right to amend this Complaint to assert additional
23 causes of action and/or to add additional parties following initiation of discovery

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1 **AS AND FOR A FIRST CAUSE OF ACTION AGAINST**
2 **KLAWOCK OCEANSIDE, INC., LAURANCE E. LANG and**
3 **SAFE HARBOR POLLUTION INSURANCE GROUP**
4 **(OIL POLLUTION ACT OF 1990)**

5
6 47. Plaintiff, United States of America, refers to and incorporates by reference as though
7 fully set forth herein each and every foregoing paragraph of this Complaint.
8

9 48. Pursuant to the Oil Pollution Act of 1990, each responsible party for a vessel from
10 which oil is discharged, or which poses the substantial threat of discharge, into or upon the
11 navigable waters or adjoining shorelines or the exclusive economic zone of the United States, is
12 strictly liable for all costs, damages, and/or disbursements specified in the Act.
13

14 49. Under the circumstances herein, defendants KLAWOCK OCEANSIDE, INC.,
15 LAURANCE E. LANG and SAFE HARBOR POLLUTION INSURANCE GROUP, the latter up
16 to and including the amount of its guarantee, are liable to the United States of America for all such
17 costs, damages, interest, and/or disbursements, in addition to statutory attorneys' fees allowed
18 under OPA, as a result of the matters alleged herein.
19

20 **AS AND FOR A SECOND CAUSE OF ACTION AGAINST**
21 **KLAWOCK OCEANSIDE, INC., LAURANCE E. LANG and**
22 **SAFE HARBOR POLLUTION INSURANCE GROUP**
23 **(OIL POLLUTION ACT OF 1990)**

24
25
26 50. Plaintiff, United States of America, refers to and incorporates by reference as
27 though fully set forth herein each and every foregoing paragraph of this Complaint.
28

1 51. Pursuant to the Oil Pollution Act of 1990, the Fund shall be subrogated to all rights,
2 claims and causes of action of claimants to whom it has paid compensation.

3
4 52. As a result of the OPA Incidents described herein, the Fund may incur costs,
5 damages, and/or disbursements by reason of claims for removal costs and damages brought against
6 it under the Oil Pollution Act of 1990.

7 53. Pursuant to the Oil Pollution Act, KLAWOCK OCEANSIDE, INC., LAURANCE
8 E. LANG and SAFE HARBOR POLLUTION INSURANCE GROUP, the latter up to and
9 including the amount of its guarantee, are liable to the United States of America for all such costs,
10 damages, and/or disbursements which may be sustained by the Fund, in addition to statutory
11 attorneys' fees allowed under OPA, as a result of the matters alleged herein..

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13
14 **AS AND FOR A THIRD CAUSE OF ACTION AGAINST**
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16 **KLAWOCK OCEANSIDE, INC., LAURANCE E. LANG and**
17
18 **SAFE HARBOR POLLUTION INSURANCE GROUP**
19
20 **(OIL POLLUTION ACT OF 1990)**

21 54. Plaintiff, United States of America, refers to and incorporates by reference as though
22 fully set forth herein each and every foregoing paragraph of this Complaint.

23 55. Pursuant to the Oil Pollution Act of 1990, 33 U.S.C. § 2717(f)(2), the United States
24 is entitled to, and hereby seeks, a declaratory judgment that is binding in any subsequent action or
25 actions against defendants KLAWOCK OCEANSIDE, INC., LAURANCE E. LANG and SAFE
26 HARBOR POLLUTION INSURANCE GROUP that said defendants are liable for removal costs
27 and damages in any such subsequent action or actions.

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1 **AS AND FOR A FOURTH CAUSE OF ACTION AGAINST**
2 **KLAWOCK OCEANSIDE, INC. and LAURANCE E. LANG**
3
4 **(28 U.S.C. § 3001, *et seq.*)**

5 56. Plaintiff, United States of America, refers to and incorporates by reference as though
6 fully set forth herein each and every foregoing paragraph of this Complaint.
7

8 57. Despite the liability, including strict liability, of defendants to the United States, all
9 as alleged in this verified Complaint, on information and belief defendants KLAWOCK
10 OCEANSIDE, INC. and LAURANCE E. LANG in breach of law, including, but not limited to, in
11 violation of the provisions of the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001 *et*
12 *seq.*, have, inter alia, instead of discharging debts owed to the United States, transferred, sold, spun
13 off, and assigned assets so as to prejudice and cause irreparable harm to the United States.
14

15 58. Despite the liability, including strict liability, of defendants to the United States, all
16 as alleged in this verified Complaint, on information and belief defendants KLAWOCK
17 OCEANSIDE, INC. and LAURANCE E. LANG, in breach of law, may hereafter transfer, sell,
18 spin off, and assign, or attempt to transfer, sell, spin off, and assign their assets, including real
19 property, so as to prejudice and cause irreparable harm to the United States.
20

21 59. All such prior and future actions as alleged in the foregoing paragraphs have caused
22 damages, and will cause damages, to the United States in an amount to be established according
23 to proof at trial.
24

25 60. All such future actions as alleged in the foregoing paragraphs will continue to cause
26 irreparable harm to the United States. As a result of the foregoing, defendants KLAWOCK
27 OCEANSIDE, INC. and LAURANCE E. LANG shall, pursuant to law and statute, be enjoined
28 from further transferring, selling, spinning off, and assigning, or attempting to transfer, sell, spin
VERIFIED COMPLAINT

1 off, and assign, their assets, including real property, so as to prejudice and cause irreparable harm
2 to the United States.

3
4 **AS AND FOR A FIFTH CAUSE OF ACTION AGAINST**
5 **KLAWOCK OCEANSIDE, INC. and LAURANCE E. LANG**
6 **(PRIORITY OF GOVERNMENT CLAIMS, 31 U.S.C. § 3713)**
7

8 61. Plaintiff, United States of America, refers to and incorporates by reference as though
9 fully set forth herein each and every foregoing paragraph of this Complaint.

10 62. Despite the liability, including strict liability, of defendants to the United States, all
11 as alleged in this verified Complaint, on information and belief defendants KLAWOCK
12 OCEANSIDE, INC. and LAURANCE E. LANG, in breach of law, have, instead of discharging
13 debts owed to the United States, transferred, sold, spun off, and assigned assets so as to prejudice
14 and cause irreparable harm to the United States.
15

16 63. Despite the liability, including strict liability, of defendants to the United States, all
17 as alleged in this verified Complaint, on information and belief defendants KLAWOCK
18 OCEANSIDE, INC. and LAURANCE E. LANG, in breach of law, including, but not limited to,
19 may hereafter transfer, sell, spin off, and assign, or attempt to transfer, sell, spin off, and assign
20 their assets, including proceeds of insurance, so as to prejudice and cause irreparable harm to the
21 United States.
22

23
24 64. All such prior and future actions as alleged in the foregoing paragraphs have caused
25 damages, and will cause damages, to the United States in an amount to be established according
26 to proof at trial.
27

28 //

1 65. All such future actions as alleged in the foregoing paragraphs will continue to cause
2 irreparable harm to the United States. Pursuant to law and statute, defendants KLAWOCK
3 OCEANSIDE, INC. and LAURANCE E. LANG and their officers, servants, employees,
4 representatives, agents, fiduciaries, or other individuals and entities acting on their behalf or with
5 their authorization, are required to discharge their foregoing debt to the United States prior to
6 discharging any other debt or payment.
7

8 66. To the extent that defendants KLAWOCK OCEANSIDE, INC. and LAURANCE
9 E. LANG, and/or their officers, servants, employees, representatives, agents, fiduciaries, or other
10 individuals and entities acting on their behalf or with their authorization, have discharged claims
11 or debts to any other person or entity other than the United States, or in the future discharge claims
12 or debts to any person or entity other than the United States in contravention of, inter alia, 31
13 U.S.C. § 3713, defendants KLAWOCK OCEANSIDE, INC. and LAURANCE E. LANG, and/or
14 their officers, servants, employees, representatives, agents, fiduciaries, or other individuals and
15 entities acting on their behalf or with their authorization, are liable to the United States for the
16 amount of any such payments.
17
18

19 67. With respect to any payments in contravention of 31 U.S.C. § 3713, and pursuant to
20 31 U.S.C. § 3713(b), any and all officers, servants, employees, representatives, agents, fiduciaries,
21 or other individuals and entities making such payments are personally liable to the United States
22 for the amount of any such payments.
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1 68. The United States reserves the right to amend this Complaint to add additional
2 claims, causes of action, and parties, including , but not limited to, in their individual capacity, any
3 and all officers, servants, employees, representatives, agents, fiduciaries, or other individuals and
4 entities who, in contravention of 31 U.S.C. § 3713(a) and (b), have already
5 discharged, or in the future discharge, claims or debts to any person or entity other than the United
6 States.
7

8 **WHEREFORE**, the United States of America prays as follows:
9

10 1. That United States of America be granted judgment against KLAWOCK
11 OCEANSIDE, INC., LAURANCE E. LANG SAFE HARBOR POLLUTION INSURANCE
12 GROUP *in personam*, pursuant to the complaint of the United States herein;
13

14 2. That the United States of America be granted declaratory judgment against
15 KLAWOCK OCEANSIDE, INC., LAURANCE E. LANG and SAFE HARBOR POLLUTION
16 INSURANCE GROUP *in personam*, for removal costs or damages binding on any subsequent
17 action or actions to recover further removal costs or damages, plus interest, costs, disbursements,
18 and attorneys' fees;
19

20 3. The United States expressly reserves the right to amend this complaint to add
21 parties and/or causes of action, as may be necessary;
22

23 4. For such other relief as the Court deems just and proper in the premises.
24
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1 Dated: June 12, 2018

BRYAN SCHRODER
Acting United States Attorney
RICHARD POMEROY
Assistant United States Attorney
Chief, Civil Division

5 CHAD A. READLER
Acting Assistant Attorney General
6 R. MICHAEL UNDERHILL
Attorney in Charge, West Coast Office
Torts Branch, Civil Division

8 s/Eric Kaufman-Cohen
9 ERIC KAUFMAN-COHEN
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12 Of Counsel
13 HELKEI HEMMINGER
National Pollution Funds Center
14 United States Coast Guard

15 Attorneys for Plaintiff
16 United States of America

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Eric Kaufman-Cohen says:

I am one of the attorneys for plaintiff, United States of America, herein, and make this verification by authority for and on its behalf; I have read the foregoing Complaint, know the contents thereof, and from information officially furnished to me believe the same to be true.

I verify under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the foregoing is true and correct.

Dated: June 12, 2018

s/Eric Kaufman-Cohen
ERIC KAUFMAN-COHEN